

CECW-AA

MEMORANDUM FOR MAJOR SUBORDINATE COMMANDS

SUBJECT: Policy Guidance Letter No. 53 - Implementation of Section 211 of the Water Resources Development Act of 1996

1. **Purpose.** This memorandum provides policy guidance on Section 211, Construction of Flood Control Projects by Non-Federal Interests, of the Water Resources Development Act of 1996 (WRDA 96). Detailed guidance will be forthcoming in an Engineering Regulation (ER).

2. **Background.** Section 211 of WRDA 96 provides authority for non-Federal sponsors to undertake the construction of authorized Federal flood control projects without Federal funding and to be eligible to be reimbursed an amount equal to the estimate of the Federal share, without interest (or inflation), of the construction cost of the project or separable element thereof.

3. **Applicability.** This guidance applies to all HQUSACE elements and major subordinate commands of the Corps of Engineers. Only projects or separable elements of projects which have been specifically authorized by Congress will be considered eligible for reimbursement under this provision. Reimbursement of non-Federal sponsor work under Section 211 (e) will not be considered for the Continuing Authorities Program projects.

4. **Policy.**

a. General: It is Corps of Engineers policy that reimbursement for the construction of any authorized flood control project undertaken by a non-Federal sponsor pursuant to Section 211 is contingent upon approval by the Secretary of the plans for construction and the Secretary's determination, after a review of studies and design documents, that the project or separable element thereof, is economically justified and environmentally acceptable. This approval must be obtained prior to the initiation of construction of the work for which the reimbursement request will be made. Further, prior to initiating negotiations for a reimbursement agreement for the construction of any project pursuant to Section 211 of WRDA 96, the Secretary of the Army must notify the Committees on Appropriations of the House and the Senate. This notification must include the total commitment and the reimbursement requirements that the Administration intends to support in future budget submissions. Budgetary and programmatic priorities will be taken into account when reviewing plans submitted by non-Federal sponsors.

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All projects pursued under the authority of Section 211 must be planned, designed and constructed in accord with appropriate Federal criteria, standards and policies, including the appropriate NEPA documentation, and construction must comply with all applicable Federal and state laws and regulations. The non-Federal sponsor will normally be required to develop the design, engineering plans and specifications for the construction it proposes to undertake. The Corps may undertake these efforts if funds are provided by the non-Federal sponsor and if such work does not delay the completion of other Corps assignments. Further, funds for activities undertaken by the Corps of Engineers district offices which are necessary for the successful completion of a Section 211 project or separable element, thereof, and construction of the sponsor proposed work including, but not limited to, design, review of project economics, environmental assessments, determination of LERRD requirements, auditing, permit evaluations, and inspections, must also be provided by the non-Federal sponsor.

The non-Federal sponsor must provide all lands, easements, rights-of-way and suitable borrow and dredged or excavated material disposal areas and shall perform or ensure performance of all relocations that the Corps determines are required for the construction, operation and maintenance of the project. The value of LERRD provided by the non-Federal sponsor that is required for the project will be determined in accordance with standard valuation procedures as contained in the model PCA for structural flood control projects. In addition, the non-Federal sponsor will be responsible for the operation, maintenance, repair, replacement and rehabilitation of the project in accordance with regulations or directions prescribed by the Corps and shall perform all other items of sponsor cooperation required by the project authorization.

In the development of a Section 211 agreement, the normal procedures for processing and reviewing a Project Cooperation Agreement will be used. The decision document approved by the Secretary must be included as support for the Section 211 agreement. Negotiations for proceeding with a project under Section 211 are to be accomplished at the District level once approval to initiate the negotiations has been received.

b. Reimbursement for projects constructed pursuant to Section 211 (e) (1):

Reimbursements for those projects constructed pursuant to Section 211 (e) (1) cannot occur until the flood control project, or separable element thereof, has been constructed. Reimbursements are subject to appropriations Acts. Any eligible reimbursable Federal share of costs associated with studies or design efforts conducted by non-Federal sponsors after authorization and prior to construction will be included in the final auditing of the total project costs upon completion of the construction of a project or separable element thereof. Any reimbursement desired by the non-Federal sponsor for studies or design accomplished prior to authorization must be specifically identified and requested in the authorizing document.

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c. Reimbursement for projects constructed pursuant to Section 211 (e) (2) (A) (Specifically named projects): Reimbursement for those projects listed in Section 211 (f) will be in accordance with Section 211 (e) (2) (A). These special reimbursement rules expand the definition of the work for which the non-Federal sponsor will be reimbursed to include studies, planning, design and construction if such work is later recommended by the Chief of Engineers and approved by the Secretary. In addition, for the Section 211 (f) projects, a non-Federal sponsor will be credited for the Federal share of any work carried out before completion of a reconnaissance study if such work is determined to be compatible with the project later recommended for construction. As required by Section 211 (e) (2) (A) the reimbursement must be contained *in* (emphasis added) an Appropriations Act; that is, the reimbursement must be earmarked in law. Any eligible reimbursable Federal share of costs associated with studies, planning or design efforts will be included in the final auditing of the total project costs upon completion of the construction of a project or separable element thereof.

For the specifically named projects, consideration will be given to reimbursement on an incremental basis; that is, reimbursement will be recommended upon completion of the construction of a discrete segment of a project or separable element, thereof, provided that the non-Federal sponsor has entered into a binding agreement with the Secretary and has committed to the construction of the total project or separable element, thereof. A discrete segment is defined as a physical portion of the project, as described in design documents, that is environmentally acceptable, is complete, will not create a hazard, and functions independently so that the non-Federal sponsor can operate and maintain it in advance of completion of the entire project or separable element thereof. Reimbursements will not be made unless and until the Secretary has determined that the construction for which reimbursement is requested is complete and has been performed in accordance with applicable permits and approved plans. Further, the agreement will contain a provision which will require the non-Federal sponsor to remit previously received reimbursements in the event that the non-Federal sponsor fails to complete the entire project or separable element thereof.

d. Treatment of Flood Damage Prevention Measures (Section 211(g)): Section 211 (g) of WRDA 96 provides that, for the purposes of Section 211, flood damage prevention measures at or in the vicinity of Morgan City and Berwick, Louisiana, shall be treated as an authorized separable element of the Lower Atchafalaya Basin feature of the Project for Flood Control, Mississippi River and Tributaries. As such, this separable element may be designed and constructed by the non-Federal sponsor and considered for reimbursement subject to the law and to the policies established under Section 211 (e) (1) as discussed in paragraph 4b, above.

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5. Implementation. This guidance is effective immediately. Detailed guidance will be issued in an ER. In the event non-Federal sponsors wish to pursue construction of an authorized flood control project using Section 211 prior to the issuance of the ER, the Division program manager must contact HQUSACE, ATTN: CECW-AA.

FOR THE COMMANDER:

RUSSELL L. FUHRMAN
Major General, USA
Director of Civil Works